

1. Did claimant suffer an accidental injury which arose out of and in the course of her employment with respondent on the date alleged? Respondent contends claimant's need for treatment on her left knee is a preexisting condition and did not come from any injury

suffered by claimant while working for respondent. Claimant acknowledges that her knee condition was a preexisting condition, but alleges the accident on October 16, 2006, aggravated the condition and led, at least partially, to the need for medical treatment.

2. Did claimant provide timely notice of this accident to respondent? Respondent alleges claimant did not tell her supervisor, Katie Hodge, of the accident until an e-mail was sent on December 27, 2006. Claimant testified that she told Steve Solomon, the most senior employee of respondent in claimant's building, of the accident on the date it happened, and within one week, told Adrienne Burress¹ in respondent's human resources department at corporate headquarters.

FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned Board Member concludes the Order For Medical Treatment should be affirmed.

Claimant described an accident on October 16, 2006, when she was helping a foster parent load items in her car. The foster parent shut the car door, and the door hit claimant in the left knee. This version of claimant's accident is uncontradicted in this record. Claimant suffered pain in the knee and by that night, the knee was swollen.

Claimant also testified that she told Steve Solomon of the accident that day. Mr. Solomon was not claimant's supervisor, but was described as the senior officer for respondent in that building. This testimony is also uncontradicted.

It is undisputed that claimant has had knee problems for some time before this incident occurred. The medical records outline several months of left knee problems and prior low back problems, including injections in the knee and back surgery. However, Michael J. Poppa, D.O., who examined claimant on January 30, 2008, at claimant's attorney's request, opined that claimant's left knee condition was aggravated, accelerated and intensified by the accident of October 16, 2006. Since the accident, claimant has received medical treatment from several health care physicians, including arthroscopic surgery to the knee. She had post-surgery complications and is currently recommended for a knee replacement. Claimant has also developed right knee and low back

¹ In the transcript of the preliminary hearing, it gives this person's name as Adrienne Burress. See P.H. Trans. at 22-23; see also Claimant's Brief to the Board. In the transcript of claimant's discovery deposition, it gives this person's name as Andrea Burris. See Discovery Depo. of Claimant at 27.

complications as a result of the limp from these left knee problems. Dr. Poppa also found a link between those right knee and low back problems and the left leg limp.

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.²

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.³

If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.⁴

Claimant described an accident occurring in respondent's parking lot when a door on a car belonging to a foster parent struck claimant in the left knee as they were loading items. This testimony is uncontradicted.

Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy.⁵

This Board Member finds claimant suffered an accidental injury which arose out of and in the course of her employment with respondent on October 16, 2006. The conflict in injury dates appears more from claimant's limited abilities as a historian rather than from any attempt by claimant to misrepresent this incident.

It is well established under the Workers Compensation Act in Kansas that when a worker's job duties aggravate or accelerate an existing condition or disease, or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident.⁶

² K.S.A. 2006 Supp. 44-501 and K.S.A. 2006 Supp. 44-508(g).

³ *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

⁴ K.S.A. 2006 Supp. 44-501(a).

⁵ *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

⁶ *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

The fact that claimant's left knee problems were preexisting is not fatal to her request for treatment. Dr. Poppa found a connection between the accident and claimant's need for treatment. He also was clear that the accident aggravated the prior left knee condition. In Kansas, an aggravation of a preexisting condition is all that is needed for the injury to be compensable.

K.S.A. 44-520 states:

Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.

Claimant testified that she discussed her injury with Steve Solomon on the day the accident occurred. Mr. Solomon did not testify in this matter. Mr. Solomon has been identified as the person in charge of the Lawrence office. Claimant's testimony regarding this conversation with Mr. Solomon is uncontradicted. This Board Member finds that claimant gave respondent notice of this accident within 10 days of the accident as is required by K.S.A. 44-520.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁷ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

⁷ K.S.A. 44-534a.

CONCLUSIONS

Claimant has satisfied her burden of proving that she suffered an accidental injury on October 16, 2006, while in respondent's parking lot. This accident arose out of and in the course of her employment with respondent. Additionally, claimant gave timely notice of this accident to respondent's senior employee at the Lawrence facility. Therefore, the Order For Medical Treatment of the ALJ should be affirmed.

WHEREFORE, it is the finding, decision, and order of this Appeals Board Member that the Order For Medical Treatment of Administrative Law Judge Brad E. Avery dated February 27, 2008, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May, 2008.

HONORABLE GARY M. KORTE

c: Michael W. Downing, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge